

SERIES
543

PROCESS OF ALTERATION IN NAME OF COMPANY

(Name clause of Memorandum of Association)

Date: 10th February, 2020



SHORT SUMMARY:

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the Memorandum of Association of the company states the name by which a company is known. The company may adopt any suitable name provided it is not undesirable.

INTRODUCTION:

The Company after incorporation can change their name by following way:

- (a) Conversion of name from private to public, or
- (b) Conversion of name from public to private, or
- (c) Change of name from ABC limited to XYZ limited.

Change in Name clause of the Company involves alteration of Memorandum of Association (hereinafter referred to as "Memorandum") of the Company. Section 13 of Companies Act 2013 regulates the process of amendment in Memorandum of Association is applicable to all companies. All clauses of Memorandum except Capital clause can be altered by following the provisions of Section 13 of Companies Act, 2013 by passing special resolution.

Section 13 of the Companies Act, 2013 deal with change of name which says that the name of the company can be changed by a special resolution and with the approval of the Central Government. Approval of Central Government is not required if the change relates to the addition/deletion of the words “private” to the name.

Sub Section- 2 of Section 4 of the Companies Act, 2013 provides that no company shall be registered by name which:

- Is identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law, or: [Section- 2 (a)]
 - will constitute an offence under any law for the time being in force, or: [Section- 2 (b)(i)]
 - is undesirable in the opinion of the Central Government. [Section- 2 (b)(Ii)].
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Alteration of Name shall not allow to following Companies:

The change of name shall not be allowed to a company:

- which has not filed annual returns or financial statements due for filing with the Registrar or
- which has failed to pay or repay matured deposits or debentures or interest thereon

STEPS FOR ALTERATION IN MEMORANDUM OF ASSOCIATION:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and 55-1)

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
 - Attach Agenda
 - Notes to Agenda
 - Draft Resolution
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STEP – II: Held Board Meeting: (As per section 173 and SS-1)

- Proposed new names for the company.
 - Pass Board Resolution after Selection of Names.
 - Authorize to Directors of Company to make Application with ROC for Name approval
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STEP-III- File – e-form- RUN with ROC:

File form RUN with ROC for approval of name:

ATTACHMENTS:

- ✓ Copy of Board Resolution.
- ✓ Approval of Owner of Trade Mark or the applicant of such application
[If proposed name(s) are based on a registered Trade Mark or is a subject matter of an application pending for registration under the Trade Mark Act, 1999]

STEP-IV

¹Name Approval Certificate from ROC, if applied name are available

STEP- V: Issue Notice of General Meeting: (Section 101)

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of atleast majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.

¹ The name once approved valid for 60 days from the date of making of application.

STEP- VI: Hold General Meeting: (Section 101)

- Check the Quorum.
 - Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
 - Pass Special Resolution.[Section-114(2)]
 - Approval of Alteration in MOA.
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STEP- VII: Filing of form with ROC: (Section 117)

- A. **File Form MGT-14** (Filing of Resolutions and agreements to the Registrar under section 117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

ATTACHMENTS:

- Certified True Copies of the Special Resolutions along with explanatory statement;
- Copy of the Notice of meeting send to members along with all the annexure;
- A printed copy of the Memorandum Article of Associations.
- Copy of Attendance Sheet of General Meeting.
- Shorter Notice Consent, if any.

- B. **File Form INC – 24** within 30 days of passing of Special Resolution

ATTACHMENTS:

- Notice along with Explanatory Statements.
- Certified True Copy of Special Resolution.
- Altered in MOA & AOA.
- Minutes of General Meeting

STEP- VIII: Issue of New Certificate:

After completing Above Procedure ROC will issue a New Certificate of Incorporation

A. Whether Stamp Duty required to pay on Alteration in Memorandum of Association (MOA)?

The Act does not contemplate new memorandum of association, and where it purports to be so, it is nothing more than a special resolution and as such does not require to be stamped.

B. Whether it is mandatory that name should reflect the Objects of the Company?

No it is not mandatory to reflect the objects of the Company in its Name. But if any word in name reflecting any business activity that should be companies objects only.

C. After approval of name upto what time name shall be available to use?

As per Companies Amendment Act, 2017 In case of alteration of Name. Name shall be reserved for 60 days from the date of approval of name.

SOME IMPORTANT POINTS:

- I. A change of name under section 21 does not affect the rights and obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by or against the company by its new name.
- II. The company which has changed its name would be entitled to ask those companies in which it is holding shares, to substitute its old certificates by new ones

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